

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE
STATE OF CALIFORNIA**

Order Instituting Rulemaking to Implement
Senate Bill 1376 Requiring Transportation
Network Companies to Provide Access for
Persons with Disabilities, Including Wheelchair
Users who need a Wheelchair Accessible
Vehicle.

R.19-02-012
(Filed February, 2019)

**JOINT COMMENTS OF THE SAN FRANCISCO MUNICIPAL TRANSPORTATION
AGENCY, SAN FRANCISCO COUNTY TRANSPORTATION AUTHORITY, AND SAN
FRANCISCO MAYOR'S OFFICE ON DISABILITY ON TRACK 5 PROPOSED DECISION**

JEFFREY P. TUMLIN
Director of Transportation
San Francisco Municipal Transportation Agency
One South Van Ness Avenue, 7th Floor
San Francisco, CA 94103
(415) 646-2522
jeffrey.tumlin@sfmta.com

TILLY CHANG
Executive Director
San Francisco County Transportation Authority
1455 Market Street, 22nd Floor
San Francisco, CA 94103
(415) 522-4832
tilly.chang@sfcta.org

NICOLE BOHN
Director
Mayor's Office on Disability
1155 Market Street 1st Floor
San Francisco, CA 94103
(415) 554-6789
nicole.bohn@sfgov.org

Dated: February 9, 2023

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

SUBJECT INDEX OF RECOMMENDED CHANGES TO THE PROPOSED DECISION..... iii

I. INTRODUCTION 1

II. DISCUSSION 2

 A. THE COMMISSION SHOULD RE-EXAMINE HOW RESPONSE TIMES WILL
 BE MEASURED FOR “WAIT & SAVE” TRIPS AND THE DATA
 NECESSARY FOR ENSURING SERVICE QUALITY..... 2

 B. ADDITIONAL REPORTING REQUIREMENTS..... 5

 C. THE COMMISSION SHOULD CLARIFY HOW RESPONSE TIMES FOR TRIP
 REQUESTS WITH MULTIPLE DRIVER CANCELLATIONS ARE
 REPORTED..... 5

III. CONCLUSION..... 6

Appendix of Proposed Changes to Findings of Fact and Conclusions of Law 1

TABLE OF AUTHORITIES

Rules

California Public Utilities Commission Rule of Practice and Procedure 14.3(a).....1

Other Authorities

Proposed Decision on Track 5 Issues1

Decision (“D.”) 21-11-004.....2

SUBJECT INDEX OF RECOMMENDED CHANGES TO THE PROPOSED DECISION

The Proposed Decision should be modified as follows:

1. The Commission should issue a revised Decision that explicitly considers whether WAV riders are receiving a reliable and consistently improved level of service by applying the same response time and reporting requirements as required for all other “on-demand” trips.
2. The Commission should revise the Proposed Decision so that trips such as Wait & Save trips, whether categorized as “on demand” or “prescheduled,” are subject to consistent reporting requirements within each category (on demand or prescheduled) and include data points for time of day, day of week, complaints, and response times.
3. The Commission should revise the Proposed Decision so that the data reporting requirements referenced in Ordering Paragraphs 11-15 apply to all counties where a TNC is providing WAV service, and to apply the data reporting requirements retroactively to the beginning of the Program.
4. In the interest of ensuring consistent and accurate reporting moving forward, the Commission should revise the Proposed Decision to clarify how response times for trip requests with multiple driver cancellations are reported.

I. INTRODUCTION

Pursuant to California Public Utilities Commission Rule of Practice and Procedure 14.3(a), the San Francisco Municipal Transportation Agency, San Francisco County Transportation Authority, and San Francisco Mayor's Office on Disability (collectively "San Francisco") submit these joint comments to the Proposed Decision on Track 5 Issues (the "Proposed Decision") filed by the California Public Utilities Commission ("Commission" or "CPUC") on January 20, 2023.

San Francisco appreciates the Commission's support for many of our proposals and encourages the Commission to adopt the proposed definitions for pre-scheduled Wheelchair Accessible Vehicle ("WAV") trips and response time of pre-scheduled WAV trips; the proposed modifications to the offset and exemption standards for pre-scheduled WAV trips; the community outreach requirements; and that public transit agencies should be eligible to apply as a Local Access Fund Administrator (LAFA). We also appreciate the consensus built among parties around these issues and are grateful these decisions will facilitate further progress of the TNC Access for All Program. Finally, we acknowledge that the Commission has elected to extend the proceeding's close date past February 2023. San Francisco supports this decision and looks forward to working collaboratively with parties, staff, and the public to address remaining issues.

However, we urge the Commission to address technical and legal errors in the Proposed Decision, which would establish standards for "Wait & Save" trips that would be impractical to implement and undermine existing Offset Time Standards for on-demand trips. To address this, the Commission should determine whether it is more appropriate to classify Wait & Save trips as "on-demand" or "pre-scheduled" trips and accordingly issue a revised Decision that adopts the same response-time calculation and standards for Wait & Save trips as already established for either on-demand or pre-scheduled trips. San Francisco also requests that a revised Decision address issues regarding data reporting and calculations that if not clarified in a Final Decision could result in unintended technical errors.

II. DISCUSSION

A. THE COMMISSION SHOULD RE-EXAMINE HOW RESPONSE TIMES WILL BE MEASURED FOR “WAIT & SAVE” TRIPS AND THE DATA NECESSARY FOR ENSURING SERVICE QUALITY

1. It would be both a technical and legal error to adopt the Proposed Decision’s on-time standard for Wait & Save trips.

The Proposed Decision adopts a calculation for measuring the response times of pre-scheduled trips and accordingly calls this response time the “pickup delay.”¹ It also finds that a Wait & Save WAV trip shall be categorized as “on-demand”² and not pre-scheduled. San Francisco supports both proposals. However, San Francisco does not support the proposed method for integrating Wait & Save trips into the Offset Time Standard because the proposed method is a technical error. While Wait & Save trips are classified as “on-demand” service, which are measured by “response times” in units of minutes, the proposed method would treat Wait & Save trips as a unitless binary measurement reflecting whether a trip arrived within a prescheduled time. The mixing of these two entirely different measurements results in a metric that has no clear meaning and obscures the service levels that Access for All is meant to improve. Aside from the confusion caused by the inconsistent application of “on-demand,” “pre-scheduled” and “pickup delay” definitions and related standards, a binary on-time standard for Wait & Save trips³ is also incompatible with response time reporting requirements and cannot be implemented coherently. Level 1 and Level 2 response times are fixed times set by the Commission. A Wait & Save trip that arrives at an agreed-upon time is simply not the same thing as a trip that arrives within a Level 1 or Level 2 response time. Counting it as such would make it impossible to understand the *true* number and share of trips meeting the response time standards. Decision (“D.”) 21-11-004 orders that:

To verify compliance with the Offset Time Standard framework adopted in Ordering Paragraph 1, a Transportation Network Company shall submit wheelchair accessible vehicle (WAV) response times for the relevant percentiles that fall outside of the deciles. This is in addition to submission of the required

¹ “For a pre-scheduled trip, ‘pickup delay’ shall be defined as: the time elapsed between the passenger’s scheduled pickup time and when the vehicle arrived. If the vehicle arrives before the passenger’s scheduled pickup time, the response time shall be “0.” See Proposed Decision, at 53.

² *Id.*, at 8, 56.

³ *Id.*, at 33, 56-57.

WAV response times in deciles, as well as Periods A and B in deciles, by quarter and geographic area, as adopted in Decision 20-03-007.⁴

In order for this reporting requirement to serve its intended purpose of cross-verification, data must be reported consistently, meaning that data must be reported according to response time in each report. The adoption of the Proposed Decision would make this technically impossible.

Further, it would be legal error to adopt the Proposed Decision’s standard for Wait & Save trips as the underpinning purpose of the TNC Access for All Act (“Act”) is to ensure WAV users have *prompt access to on-demand trips* and mandates that the Commission develop specific benchmarks to ensure *improved level of on-demand service to WAV users*. Instead of adhering to the Act’s mandate and establishing response time standards that will accurately measure whether Wait & Save trips result in improved service for WAV users, the Commission’s Proposed Decision would establish standards so flexible there may as well not be standards – a Transportation Network Company (“TNC”) could simply present their customers with a highly attractive fare for a response time window far beyond the established Level 1 and Level 2 response time standards and receive credit for providing the trip “on-time.” Incorporating these completed “on-time” Wait & Save Trips as trips that meet the response times set in both the Level 1 and Level 2 would not only result in technical errors in reporting and monitoring (as already explained), the Commission’s adopted Offset Time Standards will no longer accurately measure whether TNCs are providing an improved level of on-demand service to WAV users as is required by the Act.

TNC pricing is, by design, incredibly dynamic – even without the “Wait & Save” feature a rider could be quoted \$20 for a trip with a 10-minute response time one day and \$10 for the same trip with a comparable response time the next day; a rider’s price sensitivity weighed along with their trip purpose and required arrival time is always a factor in whether they submit their request in the first place. The Act does not contemplate fares when measuring whether the level of service being provided is sufficient to award a TNC an offset – it only explicitly states that an improved level of service should include reasonable response times. The Commission’s Proposed Decision would stray from understanding whether WAV users are receiving timely and improved on-demand service and

⁴ D.21-11-004, at 58.

instead inadequately measure whether TNCs are effectively implementing their own dynamic pricing schemes. This does not achieve the purpose of the Act to reward TNCs with offsets for providing continuously improved, reliable service and therefore, adopting the Proposed Decision’s standard for Wait & Save trips would be contrary to the letter and spirit of the Act and result in an error in law.

For these reasons, implementing the proposed standards for Wait & Save trips would be practically impossible and would undermine existing Offset Time Standards. Further, it is not appropriate by the letter of the Act to award offsets to TNCs based on whether they implement effective pricing schemes. Instead, the Commission should issue a revised Decision that explicitly considers whether WAV riders are receiving a reliable and consistently improved level of service by adopting the same response-time calculation for Wait & Save trips as established for all on-demand trips. If at this stage in the proceeding, the Commission has decided it has erred in defining Wait & Save trips as “on-demand”, then Wait & Save trips should be considered “pre-scheduled” trips and their response times should be measured by the pickup delay standards.

2. The Commission’s proposed reporting requirements for Wait & Save trips do not provide adequate insight into whether Wait & Save WAV trips “diminish the availability or service quality of traditional on-demand offerings” and should be revised.

San Francisco supports and appreciates the Commission’s intent “to ensure that Wait & Save WAV trips do not overtake a TNC’s traditional on-demand WAV trip offerings, or diminish the availability or service quality of traditional on-demand offerings.”⁵ However, as described in the previous section, the Proposed Decision mixes an incompatible measurement of “traditional” on-demand and Wait & Save trips into a single metric that lacks a clear logical meaning. In effect, the Offset Time Standards reported according to the Proposed Decision could not be directly compared to previously reported Offset Time Standards and would not provide adequate insight into whether Wait & Save trips are diminishing availability or service quality.

If the Commission wishes to ensure that “traditional on-demand offerings” are not adversely affected, then they must continue to measure these offerings consistently with past reporting requirements. Therefore, San Francisco strongly urges the Commission to revise the Proposed

⁵ Proposed Decision, at 34.

Decision so that trips like Wait & Save, whether categorized as "on demand" or "prescheduled," are still reported consistently within each of these categories and include time of day, day of week, complaints, and response times.

B. ADDITIONAL REPORTING REQUIREMENTS

San Francisco also notes that the Proposed Decision introduces new data reporting requirements that if adopted, some (limited) data would be reported for every county and quarter moving forward, other data would be reported only if a company seeks an offset in the future, and some data would be reported for every county where an Offset Request is filed or has been filed. TNCs would not be required to submit data retroactively. This is a technical error that complicates the Commission's oversight, transparency to the public of the program's effectiveness, and the reporting that companies must do.

In San Francisco, for example, where a large number of TNC WAV trips take place, Uber Technologies, Inc. ("Uber") did not request an offset and therefore did not report trip data in Quarter 2 or Quarter 4 of 2022. Not only does this make it more challenging to evaluate the data associated with San Francisco, but the statewide trends are also skewed because of the absence of San Francisco's Uber WAV trips in the data during Q2 and Q4 of 2022. Not requiring retroactive reporting affects future data analysis, because establishing an accurate baseline is impossible.

San Francisco supports the additional reporting required in the Proposed Decision, but asks that the Commission revise its Decision so that the data reporting requirements in Ordering Paragraphs 11-15 apply to all counties where a TNC is providing WAV service, and to apply the requirement retroactively to the beginning of the Program. This would address some of the most prominent reporting gaps and enable more accurate data reporting to the Legislature.

C. THE COMMISSION SHOULD CLARIFY HOW RESPONSE TIMES FOR TRIP REQUESTS WITH MULTIPLE DRIVER CANCELLATIONS ARE REPORTED

The Proposed Decision states, "For purposes of offset and exemption eligibility, a transportation network company shall report the ultimate trip status for any wheelchair accessible

vehicle trip.”⁶ San Francisco appreciates the Commission addressing this issue and recognizing the need to simplify and standardize reporting. To avoid further confusion or inconsistency, San Francisco recommends that the Commission further clarify how the reporting of a trip’s ultimate status impacts the calculation of response times for trip requests with multiple drivers. For example, suppose a rider requests a trip at 10:00 a.m. Driver 1 accepts the trip at 10:05 a.m. and then cancels at 10:15 a.m. The trip is then redirected to Driver 2 at 10:16 a.m., who accepts the trip at 10:20 a.m. and arrives at 10:35 a.m. San Francisco believes that the Commission’s intent is for TNCs to report the response time for this trip as 35 minutes as the calculation should begin when the rider first requests the trip (in this case, at 10:00 a.m.), and not when the driver who completes the trip receives the request (in this case, at 10:16 a.m.). San Francisco shares an interest with the Commission and other parties in expediently addressing this unexpected reporting issue and appreciates the Commission’s final clarification on this point in the interest of ensuring consistent and accurate reporting moving forward. In addition, to ensure the accuracy of response times that have been previously reported, San Francisco urges the Commission to require a TNC who has reported response times for trips with multiple cancellations using a different measurement in previous Advice Letters to submit amended filings with updated reporting.

III. CONCLUSION

San Francisco reiterates its appreciation for the consensus built among parties around many issues in Track 5 and we are grateful these decisions will facilitate further progress of the Access for All program. We urge the Commission to address our concerns over legal and technical errors and oversights in the Proposed Decision and incorporate the changes we have suggested. We also appreciate that the Commission has chosen to extend the rulemaking and look forward to the Commission’s continued consideration of benchmarks and standards for on-demand and pre-scheduled WAV service, as well as the question of whether counties should be able to pool funds to set up Access Provider programs. Finally, we encourage the Commission to revisit the Wait & Save issue in

⁶ Proposed Decision, at 58.

the near future as we believe the subject would benefit from more discussion, especially in a venue that can incorporate the perspective of riders or prospective riders.

Dated: February 9, 2023

Respectfully submitted,

By: _____ /s/
Jeffrey P. Tumlin
Director of Transportation
San Francisco Municipal Transportation Agency
Jeffrey.Tumlin@sfmta.com

By:  _____
Tilly Chang
Executive Director
San Francisco County Transportation Authority
tilly.chang@sfcta.org

By: _____ /s/
Nicole Bohn
Director
Mayor's Office on Disability
nicole.bohn@sfgov.org

Appendix of Proposed Changes to Findings of Fact and Conclusions of Law

Proposed additions are noted in *italics and underline*; proposed deletions are noted in ~~strikethrough~~ text.

Findings of Fact:

8. Lyft's Wait & Save trip alternate proposal ~~is a reasonable solution that measures response time based on a passenger's "on time" expectation, while not penalizing TNCs for offering a feature strongly valued by WAV passengers.~~ *would result in inconsistent reporting, undermine existing Offset Time Standards, and be contrary to the direction of the TNC Access for All Act to award offsets based on improved level of service, including reasonable response times.*
9. Information on the number of unique WAVs that are available at certain times of the day is critical to understanding whether there are certain times of the day when WAV accessibility is limited and when WAV users may be stranded without an available return WAV ride.
10. More granular location information is necessary for the 2024 Legislative Report to better understand the true range of WAV accessibility across California. Reporting WAV availability data by Census Tract will better reflect identified ESJ communities and further the goals of the ESJ Action Plan.
11. It is reasonable to modify the complaint categories, adopted in D.20-03-007, to include "pickup" and "drop off" complaints as separate categories.
12. *In order for the 2024 Legislative Report to have an accurate understanding of the impact of the TNC Access for All program on WAV accessibility across California, more information is required to fill gaps in reporting for counties and quarters in which TNCs provided WAV service but did not submit offset requests.*
13. *Clarification on how response times for trip requests with multiple cancellations are calculated is necessary to ensure consistent and accurate reporting.*

Conclusions of Law:

7. Lyft's Wait & Save trip alternate proposal should be adopted. Wait & Save trips should be categorized as on-demand trips and subject to the same Offset Time Standards and reporting requirements.
8. Additional information on the number of unique WAVs available at certain times of the day should be collected ~~by~~ in for all counties, regardless of whether any county in which a TNC is seekings, or has previously sought, an offset.
9. Granular location information by Census Tract should be collected for all counties, regardless of whether ~~in any county in which~~ a TNC is seekings, or has previously sought, an offset.
10. The complaint categories, adopted in D.20-03-007, should be modified to include "pickup" and "drop off" complaints as separate categories.
11. A response time for a trip with multiple cancellations should be measured and reported from when the rider first requests the trip and not when the driver who completes the trip receives the request.

Ordering Paragraphs:

9. A Wait & Save wheelchair accessible vehicle (WAV) trip shall be categorized as "on-demand" WAV trips for purposes of the Access for All Program. For purposes of offset and exemption eligibility, a Wait & Save trip shall ~~be considered "on time" if the driver arrives before the delayed pick-up time that was accepted by the passenger. If the trip is "on time," that trip will be included in the percentage of completed trips under the Level 1 and Level 2 Offset Time Standard response times, as adopted in Ordering Paragraph (OP) 1 of Decision (D.) 21-11-004. If the trip is not "on time," the trip shall not be included in the percentage of completed trips under the Level 1 and Level 2 response times. Whether "on time" or not, the trip shall be included in the total number of trips completed, for purposes of reporting under OP 1 of D.20-03-007.~~ be subject to the same response time and reporting requirements as all other "on-

demand” trips. The adopted requirements for Wait & Save trips shall be effective the 3rd quarter of 2023.

11. A transportation network company (TNC) that ~~requests (or previously requested) an offset~~ operates TNC WAV service in a given county shall report in its Offset Requests on a going-forward basis for that county: the unique number of wheelchair accessible vehicles (WAV) in operation (whether to serve pre-scheduled or on-demand WAV requests) by hour of the day and day of the week. If the TNC is not submitting a future Offset Request for that county, the TNC shall submit the requested data via an Information Only Advice Letter 15 days after the end of the applicable quarter. If the TNC previously operated TNC WAV service in a given county, the TNC shall submit the requested data with its Information Only Advice Letter required by Ordering Paragraph 16.

12. A transportation network company (TNC) that ~~requests (or previously requested) an offset~~ operates TNC WAV service in a given county shall report in its Offset Requests on a going-forward basis for that county: the total wheelchair accessible vehicles (WAV) trips requested and completed, broken out by Census Tract and type of service (pre-scheduled or on-demand). If the TNC is not submitting a future Offset Request for that county, the TNC shall submit the requested data as an Information Only Advice Letter 15 days after the end of the applicable quarter. If the TNC previously operated TNC WAV service in a given county, the TNC shall submit the requested data with its Information Only Advice Letter required by Ordering Paragraph 16.

13. Ordering Paragraph 14 of Decision 20-03-007 is modified as follows: A transportation network company (TNC) seeking an offset, a TNC seeking an exemption, an access provider submitting an Access Fund application, and an access provider that receives Access Fund moneys shall submit:
 - a. The number of complaints received that are related to wheelchair accessible vehicle (WAV) drivers or WAV services – by quarter and geographic area; and

- b. The number of complaints based on the following categories: securement issue, driving training, vehicle safety and comfort, service animal issue, stranded passenger, pickup, drop off, and other.
14. For purposes of offset and exemption eligibility, a transportation network company shall report the ultimate trip status for any wheelchair accessible vehicle trip. Should a TNC have not reported the ultimate trip status in previous Advice Letters, the TNC shall submit amended Advice Letters with updated reporting by the end of the 3rd quarter of 2023.
15. The data reporting requirements adopted in Ordering Paragraphs 11-14 shall be reported on a going-forward basis effective beginning the 2nd quarter of 2023.
16. TNCs shall submit Information Only Advice Letters by the end of the 3rd quarter of 2023 retroactively providing required data for counties and quarters in which TNCs provided WAV service but did not submit offset requests.
17. Response times for trips with multiple cancellations shall be measured and reported from when the rider first requests the trip and not from when the driver who completes the trip receives the request. Should a TNC have reported response times for trips with multiple cancellations using a different measurement in previous Advice Letters, the TNC shall submit amended Advice Letters with updated reporting by the end of the 3rd quarter of 2023.